IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

CUSTOMS APPEAL NO.71 OF 2007

The Commissioner ov Customs (G),
Mumbai .. Appellant.
Versus
M/s.K.M. Ganatra & Co.
CHA No.11/165 .. Respondent.

Mrs.N.V. Masurkar with Mr.N.D. Sharma for the appellant.
Mr.Kiran Doiphode i/by M/s.V.M. Doiphode & Co. for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 10TH AUGUST, 2007.

P.C. :

1. Heard.

2. This appeal is filed by the Commissioner of Customs, Mumbai against the order dated 12/12/2006 passed by the CESTAT. By the said order, the Tribunal has partly allowed the appeal by restoring the CHA licence to the respondent / assessee.

3. In this case, by an order in original dated 15-9-2006 the CHA licence granted to the assessee was cancelled inter alia on the ground that the assessee has sublet his licence to one Vipul Shah in contravention of the CHA regulations framed under the Customs Act. In appeal the CESTAT has restored the licence.

4. The main grievance of the revenue is that the subletting of CHA licence is a serious offence and moreover the assessee is a habitual offender in committing the offence of subletting the licence and, therefore, the Tribunal ought not to have restored the licence to the assessee.

5. On perusal of the order passed by the CESTAT, particularly paragraph 6 thereof, we are of the opinion that the discretion exercised by the Tribunal is just and proper. The Tribunal has held that since the assessee has undergone punishment by way of suspension of licence for more than three years for the offence committed, it is just and proper to restore the licence. The argument of the revenue that the assessee has been held to be guilty of similar offences in the past cannot be accepted because, similar adjudication order passed against the assessee has been set aside by the Tribunal and the matter is restored for denovo adjudication. In these circumstances, in our opinion, the view taken by the Tribunal is a reasonable and possible view and the discretion exercised by the CESTAT cannot be said to be unreasonable or arbitrary.

6. In this view of the matter, we see no merit in the appeal and the same is dismissed.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)